

STATE BUILDING CODE TECHNICAL REVIEW BOARD

MEETING
June 18, 2010

RICHMOND, VIRGINIA

Members Present

Mr. J. Robert Allen, Chairman
Mr. R. Schaefer Oglesby, Vice-Chairman
Mr. Matthew Arnold
Mr. J. Daniel Crigler
Mr. James R. Dawson
Mr. John H. Epperson
Mr. Joseph A. Kessler, III
Mr. James N. Lowe
Mr. Eric Mays
Ms. Joanne D. Monday
Ms. Patricia S. O'Bannon

Members Absent

Mr. John W. Ainslie, Jr.
Mr. W. Keith Brower, Jr.
Mr. John A. Knepper, Jr.

Call to Order

The meeting of the State Building Code Technical Review Board ("Review Board") was called to order by the Chairman at approximately 10:00 a.m.

Roll Call

The attendance was established by Mr. Vernon W. Hodge, Secretary, and constituted a quorum. Mr. Steven Jack, Assistant Attorney General of the State Office of the Attorney General, and the Board's legal counsel, was also present.

Review Board staff person, Alan McMahan, advised the Chairman that Mr. Knepper was not in attendance due to a death in the family and a sympathy card was being passed around to send to him.

Approval of Minutes

Mr. Oglesby moved to approve the minutes of the April 16, 2010 meeting as presented in the Review Board members' agenda package. The motion was seconded by Mr. Lowe and passed with Mr. Dawson and Ms. Monday and O'Bannon abstaining from the vote.

Final Orders

Appeal of Betty C. Hill; Appeal No. 08-12:

After consideration, Mr. Oglesby moved to approve the final order as presented in the Review Board members' agenda package. The motion was seconded by Mr. Crigler and passed with Mr. Dawson and Ms. Monday and O'Bannon abstaining from the vote.

Appeal of Charles R. Dalton; Appeal Nos. 09-14 and 09-15:

After consideration, Mr. Oglesby moved to approve the final order as presented in the Review Board members' agenda package. The motion was seconded by Mr. Crigler and passed with Mr. Dawson and Ms. Monday and O'Bannon abstaining from the vote.

Messrs. Epperson and Mays arrived at approximately 10:10 a.m.

Appeal of Walter Smith; Appeal No. 09-17:

After consideration, Mr. Oglesby moved to approve the final order as presented in the Review Board members' agenda package. The motion was seconded by Mr. Lowe and passed with Mr. Dawson and Ms. Monday and O'Bannon abstaining from the vote.

New Business

Appeal of Leonard Harris; Appeal No. 09-16:

A preliminary hearing convened with the Chairman serving as the presiding officer. The appeal concerned the rebuilding of a fire damaged building owned by Mr. Harris and located at 10760 Jefferson Ave, in Newport News, and whether a existing building permit under the Virginia Uniform Statewide Building Code (USBC) for the reconstruction of the building could be reinstated, or whether a new permit needed to be obtained. After Mr. Harris' appeal to the City of Newport New Board of Building Code Appeals, where the City USBC official's decision to require a new permit was upheld, Mr. Harris voluntarily submitted a permit application for a new permit, so Review Board staff scheduled a preliminary hearing before the Review Board to determine whether any dispute still existed.

New Business

Appeal of Leonard Harris; Appeal No. 09-16 (continued):

The following persons were sworn in and given the opportunity to present testimony:

Leonard Harris

Michael Redifer, for the City of Newport News

No exhibits were submitted by the parties to supplement the documents in the Review Board's agenda package.

After testimony concluded, the Chairman closed the preliminary hearing and stated a decision from the Review Board would be forthcoming and the deliberations would be conducted in open session. It was further noted that a final order reflecting the decision would be considered at a subsequent meeting and, when approved, would be distributed to the parties and would contain a statement of further right of appeal.

Decision: Appeal of Leonard Harris; Appeal No. 09-16:

After deliberation, Mr. Mays moved to dismiss the appeal as moot due to Mr. Harris' submittal of an application for a new building permit and the approval of the application by the City of Newport News USBC department. The motion was seconded by Mr. Oglesby and a vote was taken. The motion failed with a vote of three "yeas" and eight "nays."

After further deliberation, Mr. Epperson moved that Mr. Harris' appeal was not moot due to the fact that he had only applied for the new permit, but not obtained it, and that he testified that he still wanted the old permit reinstated. The motion was seconded by Mr. Crigler and passed with Messrs. Dawson, Mays and Oglesby voting in opposition.

New Business

Appeal of Dark Star Investment Company; Appeal No. 07-7:

A hearing convened with the Chairman serving as the presiding officer. The appeal concerned enforcement action under Part III of the USBC, the Virginia Maintenance Code, by the City of Hampton USBC department relative to a house owned by Dark Start Investment Company and located at 840 North First Street, in Hampton.

The following persons was sworn in and given the opportunity to present testimony:

Steve Shapiro, for the City of Hampton

Also present was:

Lesa Yeatts, Esq., counsel for the City of Hampton

Mr. Hodge informed the Chairman that Dark Star Investment Company, through its counsel, had requested a continuance of the appeal hearing, citing a conflict in his schedule involving a court appearance concerning a different matter that he was unable to reschedule. As the City of Hampton had not agreed to the continuance request, the parties were informed that under current Review Board policy, the Review Board members would have to rule on the request.

The Chairman permitted the representatives of the City of Hampton to briefly speak to the continuance request.

The Chairman then presented the question of whether to grant the continuance request to the Review Board members. After discussion, Mr. Oglesby moved to approve the continuance request. The motion was seconded by Mr. Epperson and passed unanimously.

New Business

Appeal of Aaron Harcrow; Appeal No. 08-7:

A hearing convened with the Chairman serving as the presiding officer. The appeal concerned enforcement action under Part III of the USBC, the Virginia Maintenance Code, by the City of Hampton USBC department relative to a house owned by Mr. Harcrow and located at 412 S. Armistead Avenue, in Hampton.

The following persons was sworn in and given the opportunity to present testimony:

Aaron Harcrow
Steve Shapiro, for the City of Hampton
Donnie Harris, for the City of Hampton

Also present was:

Lesa Yeatts, Esq., counsel for the City of Hampton

Mr. Harcrow motioned for summary judgment against the City of Hampton citing various reasons. The Chairman denied Mr. Harcrow's motion stating that all the evidence presented would be taken into consideration by the Review Board members in reaching a decision in the appeal.

Mr. Harcrow then requested that a subpoena be issued to compel the attendance of an inspector in the City of Hampton USBC department. The Chairman permitted the representatives of the City of Hampton to address the request, then presented the question to the Review Board members. After discussion, Mr. Dawson moved to deny the request as unnecessary. The motion was seconded by Ms. O'Bannon and passed unanimously.

During the testimony from the City, the following exhibit was submitted with objection by Mr. Harcrow, overruled by the Chairman:

Exhibit A – Recent Pictures of Mr. Harcrow's House

New Business

Appeal of Aaron Harcrow; Appeal No. 08-7 (continued):

After testimony concluded, the Chairman closed the hearing and stated a decision from the Review Board would be forthcoming and the deliberations would be conducted in open session. It was further noted that a final order reflecting the decision would be considered at a subsequent meeting and, when approved, would be distributed to the parties and would contain a statement of further right of appeal.

Decision: Appeal of Aaron Harcrow; Appeal No. 08-7:

After deliberation concerning the issue of whether any USBC were present, Mr. Lowe moved to uphold the citations issued by the City of Hampton USBC department. The motion was seconded by Epperson and passed unanimously.

After deliberation concerning the issue of the timeframes for repairs to be made, Mr. Epperson moved to require repairs to be completed by September 30, 2010. The motion was seconded by Ms. Monday. After continued deliberation, Mr. Kessler offered a substitute motion to uphold the 30 day timeframe for repairs to be completed to run from the entering of the final order in the appeal. The substitute motion was seconded by Mr. Arnold. After further deliberation, Mr. Kessler amended his motion to include upholding the City USBC department and City USBC board's decisions to require demolition of the house if repairs are not completed within the stipulated timeframes. The amended substitute motion was seconded by Mr. Arnold and passed unanimously.

Appeal of Ephesus Baptist Church; Appeal No. 10-1:

A hearing convened with the Chairman serving as the presiding officer. The appeal concerned the construction of a new family life center on the property of Ephesus Baptist Church, located at 1642 Smith Cross Road, in Mecklenburg County, and whether a sprinkler system was required for the building, given an exception in the USBC which permits churches with up to 12,000 square feet to be non-sprinklered irrespective of the occupant load.

New Business

Appeal of Ephesus Baptist Church; Appeal No. 10-1 (continued):

The following persons were sworn in and given the opportunity to present testimony:

Earl Stanley, for Ephesus Baptist Church
Wes McAden, for Ephesus Baptist Church
Kenny Pitts, for Ephesus Baptist Church
David Hash, for Mecklenburg County
Eddie Harris, for Mecklenburg County

Also present was:

Patrick McSweeney, Esq., counsel for Ephesus Baptist Church

No exhibits were submitted by the parties to supplement the documents in the Review Board's agenda package.

After testimony concluded, the Chairman closed the hearing and stated a decision from the Review Board would be forthcoming and the deliberations would be conducted in open session. It was further noted that a final order reflecting the decision would be considered at a subsequent meeting and, when approved, would be distributed to the parties and would contain a statement of further right of appeal.

Decision: Appeal of Ephesus Baptist Church; Appeal No. 10-1:

After deliberation, Mr. Arnold moved to overturn the decision of the Mecklenburg County USBC department and the County USBC board and hold that the family life center was a church for the application of Section 903.2.1.3 of the USBC. The motion was seconded by Mr. Epperson and a vote was taken. The motion failed with a vote of four "yeas" and five "nays." After further deliberation, Mr. Dawson moved to uphold the decision of the Mecklenburg County USBC department and the County USBC board that the family life center was not a church for the application of Section 903.2.1.3 of the USBC. The motion was seconded by Mr. Crigler and passed with Messrs. Arnold, Epperson, Lowe and Oglesby voting in opposition.

New Business

Appeal of Richard N. Clayton; Appeal No. 10-2:

A hearing convened with the Chairman serving as the presiding officer. The appeal concerned whether violations of the Virginia Statewide Fire Prevention Code (SFPC) are present in a condominium building located at 120 Roberts Lane in the City of Alexandria. Mr. Clayton is the owner of one of the units in the building.

The following persons were sworn in and given the opportunity to present testimony:

Richard C. Clayton
John Catlett, for the City of Alexandria

Also present were:

Mary O'Donnell, Esq., counsel for the City of Alexandria
Michael Thorsen, Esq., counsel for the Fort Ellsworth Unit
Owner's Association

No exhibits were submitted by the parties to supplement the documents in the Review Board's agenda package.

After testimony concluded, the Chairman closed the hearing and stated a decision from the Review Board would be forthcoming and the deliberations would be conducted in open session. It was further noted that a final order reflecting the decision would be considered at a subsequent meeting and, when approved, would be distributed to the parties and would contain a statement of further right of appeal.

Decision: Appeal of Richard N. Clayton; Appeal No. 10-2:

After deliberation, Mr. Lowe moved to uphold the decision of the City of Alexandria fire official and the City SFPC appeals board that no violations of the SFPC were present in Mr. Clayton's building. The motion was seconded by Mr. Kessler. In further deliberation, Mr. Hodge suggested that the decision should address the applicability of the Virginia Public Building Safety Regulations to the building, as they are referenced in the SFPC. A vote was taken and the motion passed unanimously.

New Business

Appeal of John Catlett, Alexandria Building Official; Appeal No. 10-6:

A hearing convened with the Chairman serving as the presiding officer. The appeal concerned an addition to the home of Mark Holmes and Marianne Bizek located at 217 Woodland Terrace, in the City of Alexandria, constructed by Culver Design Build between 1999 and 2001, and whether the City USBC department has enforcement authority for USBC violations occurring during the construction of the addition.

The following persons were sworn in and given the opportunity to present testimony:

Mark Holmes
Marianne Bizek
John Catlett, for the City of Alexandria
Gregg Fields, for the City of Alexandria
Craig Wallace, witness for the homeowners
Sloan Culver

Also present was:

Mary O'Donnell, Esq., counsel for the City of Alexandria

During testimony the following exhibits were submitted without objection:

Holmes/Bizek Exhibit A – Attorney General's Opinion
Culver Design Build Exhibit A – Statement

After the main testimony concluded, the Chairman informed the parties that due to the late hour the appeal would have to be continued for final statements and questioning by the Board members at the next Review Board meeting.

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Adjournment The meeting was adjourned by motion of Mr. Mays at approximately 6:45 pm.

Approved: August 20, 2010

/S/
Chairman, State Building Code Technical Review Board

/S/
Secretary, State Building Code Technical Review Board